

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 379

IN THE MATTER OF:

Served September 11, 1964

Proceeding Against Dawson Charter)
Service, Inc., for Failure to)
Comply With Order, and to Revoke)
Certificate.)

Docket No. 57

APPEARANCES: As previously shown.

On August 13, 1964, the Commission issued Order No. 376 finding (1) that the respondent, Dawson Charter Service, Inc., had failed to show good cause for its noncompliance with Order No. 346 (which required the respondent to pay for the cost of the transcript of a hearing on an application filed by respondent) and (2) that the certificate issued to respondent in said application proceeding be revoked if Order No. 346 was not complied with within ten (10) days.

On August 24, 1964, the respondent filed an application for reconsideration of Order No. 376, under the provision of Section 16 of the Compact, averring the following as error:

1. The assessment was unreasonable;
2. The assessment exceeds the maximum amount authorized by Section 19(b)(1);
3. The Order does not set forth with particularity the basis for its decision, nor indicate what criteria the Commission used in arriving at its conclusion; and
4. The decision is unreasonably burdensome and inequitable under the facts and applicable law.

The history of this proceeding was detailed in Order No. 376, in which the Commission spelled out that our law (Compact, Article XII, Section 19) required that all reasonable expenses of a proceeding conducted by this Commission shall be borne by such carrier. Order No. 346, issued March 13, 1964, found that the carrier had incurred an expense of \$646.10 (representing the cost of the transcript of a hearing on its application for a certificate of public convenience and necessity) and that it was reasonable. The applicant did not seek reconsideration of the findings of that order within thirty (30) days. The matter is closed insofar as whether the expense was reasonable in nature or amount. Section 16 provides that any person affected by a final order or decision may, within thirty (30) days, file an application for reconsideration thereof. Judicial interpretations of identical language of other regulatory laws have held that the thirty day period is mandatory and cannot be waived. Nor have we ever indicated a desire to do so. The matter is closed. The carrier cannot now enter the back door after it declined to use the front door. The four (4) allegations of error are misdirected here -- they go to Order No. 346. Had they been submitted in an application for reconsideration of Order No. 346, we would have considered them. We cannot and will not herein.

The sole issue here is whether the Commission erred in finding that the respondent had failed to show good cause for its noncompliance with Order No. 346. Order No. 376 states: ". . . the Commission . . . finds that the respondent failed to show good cause for its noncompliance" The carrier's reason for noncompliance was that the Order was unreasonable (Transcript of Hearing, June 16, 1964, pp 9-12).

That is specious argument, ignores the question, and, obviously, is a collateral attack on an order which is no longer the subject of review. As noted before, whether Order No. 346 was unlawful or unreasonable was an issue that should have been raised within the scheme of review provided by the statute. Dawson failed to give any cause or reason for noncompliance. The application for reconsideration will be denied.

THEREFORE, IT IS ORDERED:

1. That the application of Dawson Charter Service, Inc., for reconsideration of Order No. 376 be, and it is hereby, denied.

2. That the date for compliance or revocation ordered in Order No. 376 be, and it is hereby, extended to September 21, 1964.

BY DIRECTION OF THE COMMISSION:



DELMER ISON
Executive Director